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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,317	10/16/2003	Amy N. Mudd	380-148	8778
1009	7590	09/26/2006		
KING & SCHICKLI, PLLC 247 NORTH BROADWAY LEXINGTON, KY 40507				
			EXAMINER TILL, TERRENCE R	
			ART UNIT	PAPER NUMBER

1744

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,317

Applicant(s)

MUDD, AMY N.

Examiner

Terrence R. Till

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 12-15, 19-21, 39-42 and 46-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10, 16-18, 22, 28-31, 34-37, 43-45 and 49 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 11, 23-27, 32, 33 and 38 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species: Species A, Figures 2 and 5; Species B, Figure 3; Species C, figure 4. The species are independent or distinct because each species has a filter located on a different part of the dirt vessel. Species C, figure 4, also shows two handle structures, whereas the other two species show only one handle structure.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claims 1, 28 and 49 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. During a telephone conversation with W. Schickli on 9/18/06 a provisional election was made without traverse to prosecute the invention of Species C, figure 4, claims 1-11, 16-18, 22-38, 43-45 and 49. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 12-15, 19-21, 39-42 and 46-48 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cleaning element being a brush or a pad (claims 5, 6, 32 and 33) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 7, 10, 16-18, 22, 28-30, 34, 37, 43-45 and 49 are rejected under 35

U.S.C. 102(b) as being anticipated by Japanese patent to Fukuda et al. (JP 54-19558).

6. The patent to Fukuda et al. discloses all the recited subject matter of a vacuum cleaner, comprising a housing 1; a nozzle inlet (inherent- canister vacuums have hoses connected to floor nozzles); a suction generator (inherent) carried on said housing; a dirt vessel 2 carried on said housing having an inlet 23 and outlet 8, said dirt vessel including a sidewall and an open end 3; and a plunger 15 received in said dirt vessel, said plunger being selectively displaceable between a first position spaced along said sidewall away from said open end and a second position spaced along said sidewall adjacent said open end. Said plunger includes a margin (portion parallel to side wall) slidably engaging an inner surface of said sidewall and is considered to include a cleaning element in engagement with said sidewall. Fukuda et al. also includes a door 22 for closing the open end of the dirt vessel, a cylindrically shaped filter element (see figures 1 and 2) mounted on the plunger and received in the dirt vessel. With respect to claim 22, the housing is considered to inherently include a nozzle section incorporating said nozzle inlet and a canister section as canister-type vacuum cleaners, which this is, always include a hose connected to a floor nozzle assembly. With respect to method claim 49, Fukuda et al. is considered to inherently disclose the recited method steps of equipping said dirt vessel with a plunger at one

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end of a dirt collection chamber in said dirt vessel; and instructing a user to displace said plunger through said dirt collection chamber in order to remove dirt and debris from said dirt collection chamber.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 4 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent to Fukuda et al. (JP 54-19558) in view of French patent to Buron et al. (FR-2,823,091).

10. Fukuda et al. does not disclose said cleaning element is a resilient wiper. The French patent to Buron et al. discloses a plunger assembly 10,12,14 that includes a resilient wiper 14 in engagement with the sidewall 2 of a dirt vessel 1. It would have been obvious to a person skilled in the art at the time the invention was made to provide Fukuda et al. with a resilient wiper in

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view of the teaching of Buron et al. in order to be able to wipe all the dust from the container walls, without leaving a thin film of dust on the container wall.

11. Claims 8, 9, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent to Fukuda et al. (JP 54-19558) in view of PG publication to Oh et al. (PG PUB 2001/0042283).

12. Fukuda et al. discloses the claimed invention except that Fukuda et al. have a door frictionally fit to the cylindrical side wall instead of connected by a hinge to said sidewall and including a latch for securing said door in a closed position relative to said sidewall. The publication to Oh et al. shows that discloses a vacuum cleaner having a dirt vessel 30 with a cylindrical side wall 260 and a circular bottom wall 270 that is hinged to side wall 260 at hinge 271 and latched at the other side by latch assembly 272,273 is an equivalent structure known in the art. Therefore, because these two types of door closures were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the door closure mechanism of Fukuda et al. for a hinged door including a latch in view of the teaching of Oh et al.

Allowable Subject Matter

13. Claims 5, 6, 11, 23-27, 32, 33 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

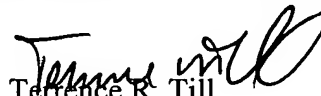
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15. The Japanese patents to Urano, Urano et al., Okubo et al. and US patent to Morgan all disclose vacuum cleaners having plunger devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys P. Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Terrence R. Till
Primary Examiner
Art Unit 1744

trt